IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 15790 of 2002

Between:

The Depot Secretary
APSRTC National Mazdoor Union
Guntur-II Depot, Guntur

..... PETITIONER

AND

1 Prl. Secretary to Government,
Labour, Employment, Training and Factories Department,
Andhra Pradesh Secretariat, Hyderabad.
2. The Deputy Chief Traffic Manager,
Andhra Pradesh State Road Transport Corporation,
Guntur.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or directions more in the nature of Writ of Mandamus declare the action of the 1st respondent in rejecting the petition claim for reference before the Labour Court as illegal and arbitrary and set aside the proceedings, dated 11-06-2002 of the 1st respondent with consequential directions to the 1st respondent to refer the dispute of the petitioner for adjudication before the Labour Court and pass such other order or orders.

Counsel for the Petitioner :MR.P.GOVINDA RAJULU

Counsel for the Respondent No.1 : Govt.Pleader for Labour

Counsel for the Respondent No.2: Mr.R.N.REDDY

The Court made the following :

ORDER:

Heard the learned counsel appearing for both the parties.

The petitioner questions the proceedings of the first respondent dated 11-06-2002 in refusing to refer the dispute for adjudication to the Labour Court on the ground that the petitioner has raised the dispute after a lapse of 4 ½ years. As there is an abnormal delay in raising the dispute for a period of 4 ½ years and the said dispute is a stale claim, it is stated that though the Supreme Court observed in the case of ***Shalimar works Limited v. Workmen***[1] that though no time limit is prescribed for reference of the dispute to the Industrial Tribunal, it has to be seen that dispute has been referred within a reasonable period and raising dispute after 4 ½ years is not reasonable. The first respondent also relied on a judgment of this Court in W.P.No.22206 of 2000 dated 17-11-2000, wherein this court has refused to interfere with the order of the Government by observing that the dispute was raised after a period of eight years and the petitioner therein had approached the Court against the rejection of the Government in refusing to refer the dispute, after a period of two years.

The case of the petitioner is that he was working as a driver in the second respondent-APSRTC. Against the punishment imposed by the depot manager on 24-01-1995, he had filed an appeal before the appellate authority which was also dismissed on 23-03-1997 and, therefore, he had raised the dispute through the Union Secretary and the said representation dated 19-09-2001 raising the dispute by the petitioner was referred to the Conciliation Officer. The Conciliation Officer failed to arrive at a settlement, and, therefore he filed a report before the Government and the Government rejected to refer the dispute by the aforesaid order dated 11-06-2002.

There is no denial that the dispute raised by the petitioner comes within the meaning of the Industrial dispute, and under Section 12(3) of the Industrial Disputes Act, 1947(for short 'the Act') where any industrial dispute exists or is apprehended, the conciliation officer shall make an attempt to settle the dispute after investigating the matter raised in the dispute. If any settlement in the matter of dispute is arrived in the course of the conciliation proceedings, the Conciliation Officer shall send the report to the Government together with a memorandum of settlement signed by the parties to the dispute. If no such settlement is arrived at, then the Conciliation Officer shall send the report to the Government along with statement of facts and circumstances

and the reasons on account of which in his opinion a settlement could not be arrived at. Under Section 12(5) of the Act, the Government shall consider the said report of the Conciliation Officer sent under Section 12(4) of the Act and the Government, in turn, may refer the dispute or refuse to refer the dispute by recording the reasons and communicate the same to the workman. Thus, there is no time limit prescribed under Section 12 r/w Sec.10 of the Act to raise the dispute within a particular time.

However, having regard to the individual facts and circumstances, the Supreme Court held that it is open for the State Government to refuse to refer the stale disputes.

In the instant case, it is the case of the petitioner that appellate authority refused to interfere with the punishment by proceedings dated 23-03-1997 and he has raised a dispute by way of filing a representation to the Conciliation Officer on 19-09-2001. There is a delay of 4 years in raising the dispute. Even the first respondent had taken notice of the judgment of the Supreme Court with regard to the fact that no time limit is prescribed for referring the disputes to the Industrial Tribunal. The Supreme Court in the case of ***Nedungadi Bank Limited vs. K.P. Madhavan***[2] held that the law does not prescribe any time limit for the appropriate Government to exercise its powers to refer the dispute under Section 10 read with Sec.12 of the Act. It is not that this power can be exercised at any point of time and to refuse the matters, which had since been settled. The said power to be exercised reasonably and in a rotional manner. The dispute raised in the said case after the period of 7 ½ years, held to be stale.

In the instant case, the petitioner is in service and I am of the view that four years delay cannot be said to have become stale claim and, therefore, I am of the opinion that the action of the Government in refusing to refer the dispute on the ground that there was a delay of 4 ½ years in raising the dispute is arbitrary and illegal.

The impugned order is accordingly set aside and the first respondent-Government is directed to reconsider and refer the dispute to the Industrial Tribunal in accordance with law by passing appropriate orders within six weeks from the date of receipt of a copy of this order.

The Writ petition is accordingly allowed.

V. Eswaraiah, J.

Dt: 17..09..2004.

RNS

ASSISTANT REGISTRAR

To

1. The Prl. Secretary to Government,
   Labour, Employment, Training and Factories Department,
   Andhra Pradesh Secretariat, Hyderabad.
2 The Deputy Chief Traffic Manager,
   Andhra Pradesh State Road Transport Corporation,
   Guntur.

3. Two CCs to Government Pleader for Labour, High Court

of A.P., Hyderabad. (OUT),

4. Two CD copies.